IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

FRIDAY, THE 10TH NOVEMBER 2006 / 19TH KARTHIKA 1928

Bail Appl..No. 6210 of 2006()

CRIME NO.R.C.13(A)/2004/KER of CBI, COCHIN.

APPLICANT/PETITIONER:

ADI ARDESHIR DUBASH, CHAIRMAN OF
ARDESHIR B. CURSETJI & SONS LTD. (A CITIZEN OF THE U.K.),RESIDING AT FLAT NO.1, 3 ENNSIMORE GARDENS, LONDON SW 7, UNITED KINGDOM AND HAVING HIS INDIAN RESIDENCE AT MOUNT NEPEAN, 31,JAGMOHAN DAS MARG, MUMBAI-400 036.

BY ADV. SRI..RAM JETH MALANI
ADV. SRI.JAI SINGHANI
BY ADV. SRI.B.RAMAN PILLAI
SRI.R.ANIL
SRI.RAJU RADHAKRISHNAN
SRI.ANIL K.MOHAMMED
SRI.DELVIN JACOB MATHEWS

RESPONDENTS:

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1. CENTRAL BUREAU OF INVESTIGATION, COCHIN,
REPRESENTED BY ITS COUNSEL.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.P.N.SUKUMARAN. (R2)
SRI.S.SREEKUMAR, SC FOR CBI (R1)
SRI.P.A.CHANDRAN
SRI.A.L.GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 10/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.M. JAMES, J.

Bail Application No. 6210 of 2006

Dated this the 10th November, 2006.

O R D E R

One Adi Ardershir Dubash, the Chairman of Ardeshir B. Cursetji & Sons Ltd, is before this Court under Section 438 Cr.P.C., praying that the warrant of arrest issued by the Special Judge, Ernakulam, as per the prayer of the first respondent, the Central Bureau of Investigation, Cochin, may be quashed; release the petitioner on bail, in the event of his arrest by the first respondent, CBI, in relation to Crime No.R.C.13(A)/2004/KER of CBI, Cochin; allow the applicant to freely go abroad and visit back India, as he is the citizen of United Kingdom, and withdraw the instructions, if any, issued to the immigration authorities in India.

2. I heard the elaborate arguments advanced by the learned senior counsel, Sri.Ram Jeth Malani, and also the learned Standing Counsel for CBI, Sri.S.Sreekumar. Both sides have placed before me the facts in detail. To put in nut shell, as required for the disposal of this application, the facts are that the Ardeshir B.Cursetji & Sons Ltd., in short ' ABC company', was on an agreement from 1989

to transport Liquified Ammonia Gas (LAG) of the Fertilizers and Chemicals Travancore Ltd. (FACT), a Government of India undertaking, from Cochin Port to Udyogamandal, covering a distance of about 15 Kms. Because of the experience and satisfactory working with FACT, the officials of the FACT had negotiated with ABC company, for transportation of LAG for future years also, from Udyogamandal to Ambalamedu, covering a distance of 30 Kms. Some service organisations of FACT had objected to this, and, therefore, they came up before this Court filing separate writ petitions, raising various allegations against few officials of FACT and the ABC company.

3. Meanwhile, there had been interference by the Government of India in FACT negotiating with ABC company alone. Therefore, Global Tenders were invited for the transportation of LAG from Udyogamandal to Ambalamedu, for the period from 1997-2007. Ten companies came forward with offers to transport LAG gas. Out of that, two companies were short listed. The lowest tender offered was that of the ABC company, in which, the petitioner is a non-executive Chairman. The amount quoted by the ABC company was Rs.1620/= per metric ton. Whereas, one M/s. Ocean Dredging India Company Ltd. had quoted an amount of Rs.1275/= per metric ton. Another agency, Naftomar Shipping and Trading Corporation Ltd. with head

office at Greece and Branch office in Bombay, also quoted an amount of Rs.1780/= per metric ton. The tender of the petitioner's ABC company, being the lowest, was accepted.

4. However, it is alleged that because of the conspiracy hatched by the accused, particularly, at the instance of the petitioner, the officials of FACT had given a mobilisation advance of Rs.52 crores for buying two barges, so that there could be effective transportation of LAG to Udyogamandal to Ambalamedu. The prosecution submit that for manufacturing a barge in India, the production cost will come only Rupees Ten Crores, and an amount of Rs.26 crores had been given per barge, only because of the conspiracy that had been entered into between the accused, in this case, and the officials of the FACT. An amount of Rs.80.5 crores is calculated as the loss having caused to FACT by the other accused and the petitioner, because of the conspiracy that had been entered into among them. Therefore, the first respondent, CBI, had arrested all the accused, except accused 7 and 11. The counsel submits that the arrested accused had been released on bail, after interrogation. The learned Standing Counsel, however, clarifies that they were remanded to judicial custody, and thereafter released on bail.

5. The learned Senior counsel for the petitioner submitted that the petitioner is having lot of business activities around the world, particularly, in United Kingdom. He is a person born in United Kingdom, and, therefore, is holding a passport of that nation. However, his fore-fathers are from India. Hence, his roots are in India. The ABC company was also formed by his ancestors. Hence, the petitioner remains as the non Executive Chairman and controls the activities of the company. However, the decisions are taken by the staff, subject to the approval or control of the Board of Directors of the company. It is further submitted by the counsel that the petitioner frequently visits India, in connection with his business activities, and will always be available in India, whenever the Investigating Officer wants him for interrogation. Counsel brought to my notice the communications which he had addressed to the first respondent, CBI, informing about his availability in India. It is, therefore, submitted by the senior counsel that the prayer of the first respondent before the court below, to get an arrest warrant against the petitioner is unwarranted. The petitioner would always be available before the Investigating authority, or before the court, whenever required, irrespective of the fact that he is moving around and travelling in connection with his business. Hence, submitted that the prayers of the petitioner may be allowed.

6. The learned Standing Counsel for the CBI has opposed the prayers of the petitioner, and submitted that it is only because of the active intervention and involvement of the petitioner, that the officials of FACT, particularly, accused 1 to 10, have given him an amount of Rs.26 crores per barge, and also accepted the tender amount of Rs.1620/= per metric ton, for the transportation of gas. Further submission is that M/s. Naftomar Shipping and Trading Corporation Ltd. is having business relationships with the sister concern of the petitioner's ABC company. The tender offered by M/s.Naftomar Shipping and Trading Corporation Ltd., at the rate of Rs.1780/= per metric ton was at the instance of the petitioner, so that, being the part of the conspiracy of all the accused, the tender would be fixed in favour of the ABC company of the petitioner. Yet another submission of the learned Standing Counsel is that because of the materials collected from the office of the petitioner's company at Cochin, during search, and the disclosure statements of the other accused, available on record, after their interrogation on arrest, the custodial interrogation of the petitioner is necessary for completion of investigation.

7. I have gone through the materials that have been placed before me. Being a Court considering an anticipatory bail application, under Section 438 Cr.P.C., I am not inclined to go into details and discuss the facts that are placed by either side, for that would ultimately affect both the investigation as well as the trial of the case. Nevertheless, it is necessary to discuss whether the granting of a pre-arrest order would affect the investigation, whether the petitioner would abscond and also the arrest and custodial interrogation of the petitioner is necessary in the circumstances of the case.

8. The documents produced show that the petitioner has addressed the first respondent about his arrival in India, and also expressed his readiness to appear before the Investigating Agency, if so required. It is true that the learned Standing Counsel has brought to my notice, certain wordings used in those communications, in which, the officials of the petitioner had requested the investigating agency, first respondent, to send a questionnaire, so that the petitioner could answer. I am not entering into a discussion on that fact, for an employee working in the company under the petitioner,

may have his own impressions about the power and authority of his senior officer. If the communication reflects the immaturity of such an employee, it need only to be ignored by the investigating agency.

9. The materials available clearly show that the petitioner is a person who is frequently travelling from India to abroad and back, in connection with his business activities. It is necessary that when an allegation is made against the petitioner, he should be available before the investigating officer for interrogation. All the allegations made against the petitioner, and the investigation so far conducted by the first respondent, CBI, are based on documents. The issuance of the demand draft through the agency of the petitioner at Cochin, M/s.Binny Ltd. for an amount of Rs.25 lakhs, the awarding of the contract, the issuance of Rs.52 crores for buying two barges, as alleged, are all borne out by records. The senior counsel also brought to my notice that the cost of a standard barge varies from Rs.24.25 crores to Rs.40 crores. At this stage, it cannot be said that the officials of the FACT had given an amount of Rs.52 crores, for the purchase of two barges, because of a conspiracy to cause loss to FACT.

10. However, as discussed above, I am of the view that the activities of all the accused in relation to the ABC company and FACT are borne out by records. What remains is the effective questioning of the petitioner in relation to and his involvement with the crime. Therefore, his appearance before the Investigating Officer is essential. For that matter, I do not find it necessary to send him for custodial interrogation.

11. In view of the above discussions, I direct the petitioner to surrender before the first respondent, CBI, at Cochin office, on 5.12.2006 at 10 a.m. The investigating Officer shall interrogate the petitioner, as per the law.

12. In the event of his arrest, he shall be released on bail, on he executing a bond for Rs.50,000/= (Rupees Fifty Thousand only) with two solvent sureties, each for the like sum, to the satisfaction of the Investigating Officer arresting him.

13. The petitioner shall be available before the Investigating Officer continuously for seven days, during 10 a.m. to 5 p.m., from the date of surrender, so that he could be interrogated by the Investigating Officer.

14. The warrant of arrest issued by the court below shall be withdrawn. The communication, if any, issued to the Immigration authorities, and to any other international agencies, shall also be withdrawn by the first respondent, CBI.

15. If the first respondent is desirous of having the continued interrogation of the petitioner, after the expiry of the above period of seven days, notice shall be given to him, at his Bombay office, with a reasonable period, to enable him to travel to Cochin from the place where ever he may be. On service of such notice to his office at Bombay, the petitioner shall appear before the first respondent at Cochin, as directed in such notice.

16. The petitioner shall not violate the conditions contained herein, and in the event of such violation, the first respondent, Investigating agency, CBI, is entitled to move for appropriate remedies.

J.M. JAMES,
JUDGE

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